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CIRCULAR LETTER: DHCQ 05-10-451
This Circular Letter supersedes Circular Letter: DHCQ 9-04-444

TO: Long Term Care Facilities Administrators

FROM: Paul I. Dreyer, Associate Commissioner

DATE: October 14, 2005

RE: Revised Guidelines for Long Term Care Facility Emergency Ambulance Transport Policies

Preamble:

In September, 2004, the Department distributed to all long term care facilities Guidelines for Long Term Care Facility (LTCF) Emergency Ambulance Transport Policies. Since that time, the Department has received questions about the guidelines. After discussion with LTCF and Emergency Medical Services (EMS) provider representatives, the Department determined that issuing revised guidelines would be helpful to facilities. This circular letter supersedes the Guidelines previously issued as Circular Letter: DHCQ 9-04-444.

The revisions apply only to nursing facilities that have a contract with a private ambulance company for emergency ambulance transports. As you will see in Exhibit A, Attachment 1, the algorithm has been revised, deleting references to stable vs. unstable patients. The focus is shifted to the capabilities of the facility on a case-specific basis. The ultimate question is: does the facility have the appropriate first response capability, based on the patient's medical needs, that is equivalent to the first response capability provided by the local EMS system? If yes, then the facility may call its contracted ambulance service. Additional revisions have been made to Exhibit A to clarify that nursing facilities have the option of participating in the development of the service zone plans. Providers are reminded that EMS Regulations governing dispatch,

treatment and transport (105 CMR 170.355) are currently in effect and will continue to be in effect after service zone plans are in place.

The purpose of this letter is to provide long term care facility administrators with guidance for development of policies regarding emergency ambulance transport. These policies are required pursuant to an amendment in 2004 to the Licensing of Long Term Care Facilities regulation at 105 CMR 150.002 (H). Attached for your information (see Exhibit B) is a copy of the Memorandum that was presented on July 27, 2004 to the Public Health Council regarding this amendment, as well as related amendments to the Emergency Medical Services System regulation (105 CMR 170.000).

The Guidelines (see Exhibit A) include the purpose of the amendments, the language of the amendment to the LTCF regulation, and a summary of what is required in the policies of three categories of long term care facility: (1) rest homes, (2) nursing facilities that do not have a contract with a private ambulance company or have a contract with a private ambulance company for scheduled transports only, and (3) nursing facilities that have a contract with a private ambulance company or companies for emergency transport.

For the first two categories (rest homes and nursing facilities that do not have a contract with a private ambulance company or have a contract for scheduled transports only), the guidelines are simple: the facility must have a policy that directs its employees to contact 911 in the event a person at the facility experiences an emergency medical condition.

For the third category of facility (nursing facilities that have a contract with a private ambulance company or companies for emergency ambulance transport) the guidelines provide additional options under certain circumstances. A nursing facility that has a contract with a private ambulance company for emergency transports must develop a policy under which the licensed health care professional on duty at the time of the medical emergency will contact either the local EMS response system (911) or the contracted ambulance provider. This policy must ensure that the patient will receive the same first response capability from the combination of facility staff and private ambulance as the patient would have received from the local 911 responders.

In the previous guidelines, the Department indicated that it expected all facilities to have developed policies, in accordance with the guidelines, no later than December 1, 2004. Any changes to facility policies necessitated by the revisions to these guidelines should be made by December 1, 2005. Policies must be maintained at the facility and will be subject to review by the Department staff upon survey. If you have questions, please contact Jill Mazzola, R.N., Assistant Director, Division of Health Care Quality, at (617)753-8106.

cc Regional EMS Medical Directors
EMCAB Members

EXHIBIT A

Guidelines for Long Term Care Facility
Emergency Ambulance Transport Policies and Procedures

Purpose: In July 2004, the Department of Public Health promulgated amendments to the Emergency Medical Services (EMS) System Regulation (105 CMR 170.000) regarding service zone plans and Emergency First Response (EFR) and the Long Term Care Facility Licensure Regulation (105 CMR 150.000). The amendments to the EMS regulation prohibit local jurisdictions from requiring in service zone plans that a designated EFR service be dispatched to a nursing facility or assisted living facility that has a contract with a private ambulance provider when the facility makes a request for primary (emergency) ambulance service directly to that provider, so long as the facility is staffed with round-the-clock licensed health care professionals on site. All nursing facilities are so staffed. The amendment to the long term care facility licensure regulation requires the administrators of long term care facilities (nursing facilities and rest homes) to develop policies and procedures governing emergency ambulance transport. These guidelines are presented to assist facilities in the development of their policies to maximize the quality of emergency care provided to residents.

What is the regulatory language regarding long term care facility policies?

The amendment to the long term care facility licensure regulation at 105 CMR 150.002(H) added the following new language:

> The administrator shall develop and implement policies and procedures governing emergency transport. Such policies and procedures shall include criteria for deciding whether to call the emergency telephone access number 911 or its local equivalent, or a contracted private ambulance service provider, if any, in response to an emergency medical condition. The criteria for determining whether to call 911 versus the contracted provider shall address such factors as the nature of the emergency medical condition, and the time to scene arrival specified in relevant agreements with the contracted provider, if any.

Under existing language at 105 CMR 170.020 of the Massachusetts EMS regulation:

> **Emergency** means a condition or situation in which an individual has a need for immediate medical attention, or where the potential for such need is perceived by an individual, a bystander or an emergency medical services provider.

What does the amendment to the long term care facility licensure regulation mean to long term care facilities?

The Department has developed the attached algorithm (see Attachment 1) to outline the process to determine which facilities should have a policy to call 911 in the event anyone at the facility experiences an emergency medical condition, and under which circumstances **a nursing facility**, which by federal definition has licensed health care professionals on duty 24 hours a day, seven

days a week, may have a policy that allows the licensed health care staff on duty at the time of a medical emergency to determine whether to call a contracted ambulance service or call 911.

1. Rest Homes

Each rest home administrator must develop and implement a written policy that directs the responsible person or his/her designee to call 911 in the event a resident, staff person or visitor experiences an emergency medical condition. The Department expects that staff in each rest home are trained to recognize the existence of an emergency medical condition and the need for emergency care.

2. Nursing Facilities that DO NOT have a contract with a private ambulance company or have a contract with a private ambulance company for scheduled transports only

Each nursing facility administrator must develop and implement a written policy that directs the licensed health care staff to call 911 in the event a resident, staff person or visitor experiences an emergency medical condition. The Department expects that staff in each nursing home are trained to recognize the existence of an emergency medical condition and the need for emergency care.

3. Nursing Facilities that have a contract with a private ambulance company for emergency ambulance transports

Each nursing facility administrator must develop and implement written policies and procedures governing emergency ambulance transport including criteria for deciding whether to call 911 or a contracted private ambulance service provider, in response to an emergency medical condition.

Nursing facilities that implement policies that direct staff to contact the facility's contracted providers for emergency transport must demonstrate that the patient will receive the level of care from the facility staff and the contracted provider that is equivalent to the capabilities of the local EMS first response system. Such demonstration must be documented as part of the facility's policies and procedures and approved by the facility's medical director. The Department encourages medical directors to consult with the Regional EMS Medical Director(s), the local hospital's(s') Emergency Department Medical Director(s), and representatives of the contracted ambulance company or companies in determining the capacity of the system to respond.

Policies developed by the facility must be consistent with the local service zone plan developed in accordance with the EMS regulation following its approval by the Department. To assure such consistency, the local jurisdiction must give representatives of nursing facilities the opportunity to participate in the service zone plan development as required by amendments to the EMS regulation (105 CMR 170.500(B)(5)).

Each nursing facility must:

- ensure that all nursing staff have been trained regarding the different levels of EMS response and particularly relating to emergency equipment, medications and supplies;

- ensure that there is ongoing training and education relating to the policy;
- provide an opportunity for and encourage feedback regarding the policy; and
- perform at a minimum an annual review of the policy by the facility's senior medical management. The Department encourages consultation, as appropriate, with the Regional EMS Medical Director(s), the local hospital's(s') Emergency Department Medical Director(s), and a representative of the contracted ambulance company or companies in order to take into account changes in the local EMS response capability, to assess emergency care provided to facility residents, staff and visitors and to ensure that the policy remains in compliance with the regulations and guidelines.

Please note that in no circumstances may the policy prohibit the licensed health care professional from contacting 911.

The EMS regulations (105 CMR 170.355) require that if an ambulance service receives a call and cannot immediately dispatch an ambulance or believes that another service could reach the scene in a significantly shorter period of time, the service must pass the call on to another service. Thus, nursing home policies should be developed with the expectation that regardless of whether the call goes to a private service or to 911, the call will result in the prompt dispatch of an ambulance.

Attachment 1
Algorithm: Activation of EMS to Respond to Emergencies

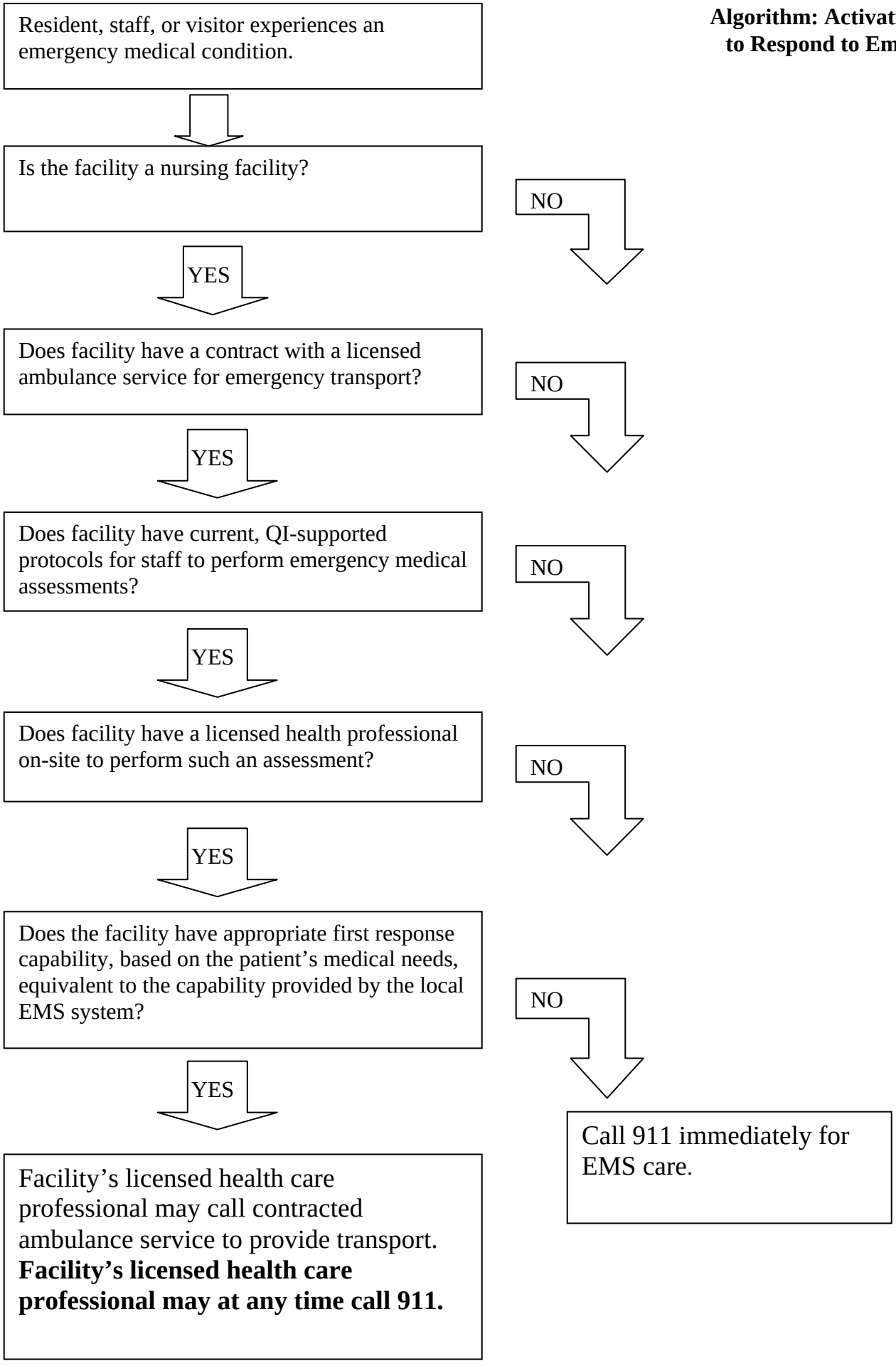

EXHIBIT B

The Commonwealth of Massachusetts

Executive Office of Health and Human Services
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M E M O R A N D U M

TO: Commissioner Christine C. Ferguson and Members of the Public Health Council

FROM: Paul Dreyer, Associate Commissioner
Center for Health Quality Assurance and Control

DATE: July 27, 2004

RE: Request for Approval to Finalize Emergency Amendments to 105 CMR 170.000: Emergency Medical Services System and 105 CMR 150.000: Licensing of Long-Term Care Facilities

INTRODUCTION

The purpose of this memorandum is to request the Public Health Council's approval to finalize amendments to 105 CMR 170.000: *Emergency Medical Services System* and 105 CMR 150.000: *Licensing of Long-Term Care Facilities* that were promulgated on an emergency basis on May 25, 2004.

The emergency amendments clarified the extent to which EFR service to nursing homes and assisted living facilities with private provider contracts may be incorporated into service zone plans. The amendments clarified this issue by placing decision-making responsibility with the licensed health care professionals at the facilities rather than with the local jurisdiction.

BACKGROUND

Under EMS 2000, service zone planning is at the heart of community-based EMS service delivery. The statute calls for local jurisdictions to develop service zone plans to coordinate, integrate and implement EMS delivery and to designate service zone providers. However, the Department has the ultimate authority to approve service zone plans and the designation of service zone providers within those plans.

Amendments to 105 CMR 170.000, referred to as the "service zone regulations," were promulgated on July 18, 2003. Since that time, as the Department had worked to craft materials to aid in implementing the regulations, it became apparent that the role EFR services play in responding to calls to health facilities with private ambulance contracts remained a source of confusion and controversy.

EMS 2000 and the service zone regulations as previously promulgated recognized the importance of private ambulance services in the provision of emergency services and also as participants in the service zone planning process. EMS 2000 also created the new voluntary category of EMS service called "EMS first response" or EFRs, which is the rapid response and initiation of EMS at the scene of a medical emergency, prior to the arrival of an ambulance service, by a service that is 1) licensed, and its responding crew certified, by the Department, 2) a private or public entity, 3) designated in a service zone plan and 4) integrated into the EMS system. The service zone regulations provide that EFR services be included in service zone planning.

Questions were posed to the Department regarding the role of EFR services when a facility that has health care professionals on site chooses to request primary ambulance response from a private ambulance provider with which it has a contract to provide such services. The service zone regulations clearly require service zone recognition of all such contracts when the private ambulance provider is able to meet service zone performance standards. The regulations however had still permitted local jurisdictions to specify the circumstances under which EFR services would be dispatched to all calls. This set up a local planning process with the potential to put local community providers at odds with one another.

EMERGENCY AMENDMENTS

On May 25, 2004, the PHC approved emergency amendments to 105 CMR 170.000 as recommended by the Department that explicitly prohibit local jurisdictions from requiring in service zone plans that a designated EFR service be dispatched to a nursing home or assisted living facility that has a contract with a private ambulance provider when the facility makes a request for primary ambulance service directly to that provider, so long as the facility is staffed with round-the-clock licensed health care professionals on site. If such a facility decides to request emergency response by dialing 911 or the local equivalent, then the dispatch of any designated EFR service will be according to the local service zone plan. Thus, the licensed health care professional on site will control the dispatch of emergency response.

The PHC also approved the Department's recommended amendment to 105 CMR 150.000 (the nursing home regulation) that explicitly requires that nursing homes licensed by the Department develop and implement policies and procedures governing emergency transport including criteria for deciding whether to call 911 or a contracted private ambulance provider.

PUBLIC HEARING AND COMMENT

The Department called a meeting of the Emergency Medical Care Advisory Board (EMCAB) on June 14, 2004, in order that the EMCAB would have a reasonable opportunity to review and make recommendations on the emergency amendments prior to final adoption. The Department held a public comment hearing on July 6, 2004, and continued to accept written comments until July 9, 2004. The Department previously forwarded to you all of the written comments it received, a copy of the transcript of all comments offered at the public comment hearing on July 6, a copy of the sign-in sheet from that same hearing, and a staff summary of the comments offered by EMCAB members on June 14. Because the testimony was provided to you in its entirety, the Department will not attempt to summarize the comments here. However, in general, fire services and fire service-based EMS providers opposed the changes, while private ambulance providers and nursing homes supported the emergency amendments.

CHANGES MADE AS THE RESULT OF PUBLIC COMMENT

The Department has made one change to the emergency amendments as the result of the public comments. Because the amendments place decision-making regarding calls to 911at the facility level, it is important that health care facilities within a service zone are "at the table" during service zone planning. The Department intends to amend 105 CMR 170.500 (B) to add the participation of service zone health care facilities, including nursing homes, as a required element to the service zone planning process.

CONCLUSION

The Department requests that you approve the final promulgation of the amendments with the addition underlined in the Attachment to this memo. Following your approval, the Department intends to file these amendments with the Secretary of the Commonwealth for permanent adoption, to take effect upon publication in the Massachusetts Register. Additionally, immediately following your approval, the Department intends to release guidance consistent with these regulations to communities to assist them in beginning the service zone planning process.

Proposed Change to Emergency Amendments to 105 CMR 170.000

170.249: Service Zone Agreements

(A) The local jurisdiction shall ensure that the designated primary ambulance service executes a service zone agreement with each ambulance service that notifies it, in accordance with 105 CMR 170.248, that the ambulance service has a provider contract for primary ambulance response in the service zone. The service zone agreement shall, at a minimum:

(1) Coordinate and optimize the use of resources for primary ambulance response, and ensure an appropriate response to emergencies;
(2) Reflect the service zone's performance standards for primary ambulance response that the ambulance service with a provider contract must meet; and
(3) Define the process for notification of an EFR service, if any, of primary ambulance response calls received by the ambulance service with a provider contract. Such process shall comply with the provisions of 105 CMR 170.355(B)(1) and 105 CMR 170.510(I)(3)(f).

170.355: Responsibility to Dispatch, Treat and Transport

(B) Primary Ambulance Response.

(1) Upon receipt of a call to respond to an emergency, the service zone's primary ambulance service, or a service operating pursuant to a service zone agreement, and the closest appropriate designated EFR service(s), if any, shall be immediately notified and dispatched in accordance with the applicable service zone plan and 105 CMR 170.510(I)(3)(f).
(2) When the primary ambulance service receives a call, it shall ensure that the closest ambulance is immediately dispatched in accordance with the service zone plan. If the primary ambulance service dispatcher believes at the time the call is received that an ambulance is not available for immediate dispatch, or believes that another ambulance service has the capacity to reach the scene in a significantly shorter period of time, the dispatcher shall immediately contact the ambulance service with the closest ambulance, in accordance with the service zone plan.
(3) When an ambulance service with a provider contract providing primary ambulance response pursuant to a service zone agreement receives a call for primary ambulance response, if it believes at the time the call is received that it cannot meet the service zone standards for primary ambulance response, the ambulance service must immediately refer the call to the primary ambulance service, unless otherwise provided in the service zone plan.
(4) When an ambulance service other than the primary ambulance service receives a call to provide primary ambulance response that is not pursuant to a provider contract and a service zone agreement, it must immediately refer the call to the primary ambulance service.

170.500: Service Zone Plans

(A) Pursuant to M.G.L. c. 111C, §10, each local jurisdiction shall be covered by a service zone plan approved by the Department that:

(1) identifies and makes optimal use of all available EMS resources;
(2) sets out how emergency response is coordinated and carried out; and
(3) ensures the dispatch and response of the closest, appropriate, available EMS resources.

(B) Service zone plans shall be developed by the local jurisdiction(s), with technical assistance, review and recommendation for approval by the applicable Regional EMS Council. The local jurisdiction(s) shall develop the service zone plan with input from the following, at a minimum:

(1) first responder agencies operating in the service zone, including municipal fire and rescue departments;
(2) emergency first response (EFR) services operating in the service zone;
(3) all ambulance services providing primary ambulance response pursuant to provider contracts in the service zone; ~~and~~
(4) all other ambulance services operating in the service zone; and
(5) the health care facilities, including nursing homes, that appear in the service zone inventory pursuant to 105 CMR 170.510(A)(5).

(C) A service zone plan may cover a single local jurisdiction or multiple local jurisdictions. If a plan covers more than one local jurisdiction, it must be approved by each of the local jurisdictions covered by the plan. If a service zone plan covers local jurisdictions in more than one EMS region, it must be reviewed by each of the applicable Regional EMS Councils.

170.510: Elements of the Service Zone Plan

Local jurisdictions shall ensure that each service zone plan contains, at a minimum, the following elements:

. . .

(I) Operational plan for ensuring dispatch and response to emergencies of the closest, appropriate, available EMS services, in accordance with 105 CMR 170.355, including:

(1) Coordination and optimal use of all licensed services for emergency response, including the following:
    (a) primary ambulance service;
    (b) ambulance services with service zone agreements with the primary ambulance service, pursuant to 105 CMR 170.249;
    (c) ambulance services who have backup agreements with services referenced in 105 CMR 170.510(I)(1)(a) and (b); and
    (d) EFR services, if any.
(2) Location of all licensed EMS services; and
(3) Clear criteria for determining which ambulance service has the closest appropriate ambulance, and when EFR services, if any, should be dispatched, based on factors including, but not limited to, the following:
    (a) type of emergency or patient condition;
    (b) base locations of services;
    (c) hours of operation;
    (d) number, hours and location of EMS personnel, and

(e) services' capabilities.

(f) No service zone plan may include criteria for the notification and dispatch of a designated EFR service to a facility licensed pursuant to G. L. c. 111, § 71 or certified pursuant to G. L. c. 19D, where there is a licensed health care professional on site 24 hours per day seven days per week, and where there is a provider contract in place to provide primary ambulance response, unless a licensed health care professional at such facility requests primary ambulance response by dialing the emergency telephone access number 911, or its local equivalent. Nothing herein shall bar any person from dialing 911 or its local equivalent.

150.002 (H) The administrator shall develop and implement policies and procedures governing emergency transport. Such policies and procedures shall include criteria for deciding whether to call the emergency telephone access number 911 or its local equivalent, or a contracted private ambulance service provider, if any, in response to an emergency medical condition. The criteria for determining whether to call 911 versus the contracted provider shall address such factors as the nature of the emergency medical condition, and the time to scene arrival specified in relevant agreements with the contracted provider, if any.